REMARKS

This responds to the Final Office Action dated April 7, 2010. Claims 1 and 20 are amended. No claims are currently canceled or added. Claims 12 and 15 were previously canceled without prejudice or disclaimer. As a result, claims 1-11, 13, 14, and 16-28 remain pending in this patent application.

Applicant respectfully submits that the amendments and additions to the claims are fully supported by the specification, as originally filed, and that no new matter has been added. Applicant hereby respectfully requests further examination and reconsideration of the application in view of the following remarks.

The Rejection of Claims Under § 102

Claim 1-6, 8-10, 13, 14, 16-22, and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Warkentin et al. (U.S. Patent No. 6,824,512). Applicant respectfully traverses this rejection.

Anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *See Verdegaal Bros. V. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). "The *identical invention* must be shown in as complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

Applicant cannot find each and every recitation in claims 1-6, 8-10, 13, 14, 16-22, and 24-27 in Warkentin et al. For instance, Applicant cannot find in Warkentin et al. "an implantable device configured to implantably electrically monitor fluid retention; an external, non-ambulatory pill-dispensing containment unit configured to accessibly house diuretic medication,

the containment unit including a diuretic medication pill receptacle configured to house the diuretic medication and configured to be selectively accessed by a person to dispense the diuretic medication; . . . said health management host system configured to receive data related to the medication event, receive patient physiological data including fluid retention data collected by the implantable device, analyze the patient physiological data and the medication event data, and generate a diuretic medication therapy regimen using the analysis of the patient physiological data and the medication event data," as recited in claim 1 or as similarly recited in claims 9 and 24.

There is no description in Warkentin et al. related to an implantable device to electrically monitor fluid retention. Neither the portions of Warkentin et al. cited by the Office Action at pages 2-3, nor any other portion of Warkentin et al., make any reference to implantably electrically monitoring fluid retention, a pill-dispensing containment unit configured to accessibly house diuretic medication, and/or generating a diuretic medication therapy regimen using the analysis of the patient physiological data and the medication event data. It appears that Warkentin et al. is intended for use in a neural stimulation context and not in a fluid monitoring and treatment context. For instance, Warkentin et al. states that "IMD 10 contains a microprocessor for timing, sensing and pacing functions consistent with preset programmed functions. Similarly, IMDs 10' and 10" are microprocessor-based to provide timing and sensing functions to execute the clinical functions for which they are employed. For example, IMD 10' could provide neural stimulation to the brain via electrode 30 and IMD 10" may function as a drug delivery system that is controlled by electrode 36." (Warkentin et al. at col. 6, lines 34-41.)

Warkentin et al. does not include every feature of claims 1, 9, and 24 in complete detail or as arranged as in the claims. The portions of Warkentin et al. cited by the Office Action do not support the Office Action's characterizations of Warkentin et al. The vague reference in the cited portion of Warkentin et al. (col. 10, line 66 – col. 11, line 12) to monitoring physiologic parameters does not include description related to an implantable device electrically monitoring fluid retention. There is similarly no description in Warkentin et al. related to accessibly housing diuretic medication. Additionally, Warkentin et al. does not describe a "health management host system configured to . . . analyze the patient physiological data and the medication event data, and generate a diuretic medication therapy regimen using the analysis of the patient

physiological data and the medication event data." Warkentin et al. merely describes monitoring physiologic parameters and states that "IMDs 10, 10' and 10" could alert the physician or clinician to confer with the patient." (*See* Warkentin et al. at col. 10, line 66 – col. 11, line 6.) There is no description in Warkentin et al. of the Warkentin et al. system generating a diuretic medication therapy regimen using the analysis of the patient physiological data and the medication event data. Merely mentioning that the Warkentin et al. IMDs could alert the physician or clinician to confer with the patient does not amount to analyzing the data and generating a diuretic medication therapy regimen. As such, Warkentin et al. does not include every feature of claims 1, 9, and 24 in complete detail or as arranged as in the claims.

For at least these reasons, Applicant respectfully submits that Warkentin et al. does not show each and every recitation of independent claims 1, 9, and 24.

Claims 2-6 and 8 depend from and incorporate the features of independent claim 1; claims 10, 13, 14, and 16-22 depend from and incorporate the features of independent claim 9; and claims 25-27 depend from and incorporate the features of independent claim 24. Accordingly, claims 10-14 and16-23 incorporate the features of claim 9. For at least reasons analogous to those stated above with respect to claims 1, 9, and 24, claims 2-6, 8, 10, 13, 14, 16-22, and 25-27 are accordingly believed to be patentable. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

For at least these reasons, Applicant submits that claims 1-6, 8-10, 13, 14, 16-22, and 24-27 are allowable over Warkentin et al. and respectfully requests reconsideration and withdrawal of this rejection.

The Rejection of Claims Under § 103

Claims 7, 11, 23, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warkentin in view of Mann et al. (U.S. Patent Application Publication No. 2004/0147969). Applicant respectfully submits that obviousness does not presently exist because the references and the Office Action's reasoning do not appear to fully encompass the subject matter of claims 7, 11, 23, and 28 for at least the reasons explained above with respect to claims 1, 9, and 24 from which claims 7, 11, 23, and 28 depend. Applicant respectfully requests withdrawal of this

rejection of claims 7, 11, 23, and 28. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (612) 359-3275 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 7th day of June, 2010.

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